IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1018 OF 2004
IN
SUIT NO.2608 OF 1992

Dharamsingh H.Sohal .. Plaintiff

Vs.

M/s.Sohal Engineering Works
& Ors. .. Defendants

And

The Court Receiver,
High Court, Bombay & Ors. .. Respondents

And

Mazdoor Congress .. Applicant

Ms.M.Nair & Co. for the respondent no.2

Mr.H.D.Buch i/b N.D.Buch for the applicant

Mr.D.R.Dhurat, 1st Asst. to Court Receiver present

**CORAM : S.U.KAMDAR, J**

**DATED : 20TH APRIL 2005**

P.C.:

1. The present Chamber Summons is taken out by the applicant who are the Union of the Workers claiming certain amount lying with the Court Receiver, High Court, Mumbai to be paid over to the

workers to the extent of Rs.11,00,278.13 as per Judgment and Order of the Industrial court, Maharashtra, at Mumbai dt.30.09.02.

2. In the present case there are two suits filed being Suit No..2608 of 1992 and 2667 of 1993. The original suit being 2608 of 1992 is filed by one of the partner of partnership firm seeking dissolution of partnership and for taking accounts. During the pendency of this suit a Court Receiver was appointed for assets of partnership firm which interalia include Sohal Engineering Workers which is situated at Sohal Industrial Estate, Lal Bhadur Shastri Marg, Bhandup, Mumbai 400078. There are various occupants who are in occupation of various premises therein. The receiver has collected the rent from the said occupants. The suit which has been preferred by the bank is suit no. 2667 of 1993. This suit is a suit for recovery of term loan amount and for foreclosure of the mortgage in respect of very same premises. It has been claimed that the said property being mortgaged property to the bank must be sold and the amount be recovered and adjusted towards the claim of the Bank. The

Court Receiver was also appointed as Receiver in respect of said premises in the Bank Suit. In so far as partnership suit is concerned being Suit No. no.2608 of 1992 the court receiver is already discharged by an order passed by Deshmukh J on 10.8.01. The suit which has been filed by the bank in this court has been transferred to the DRT and by an order dt.20.6.03 passed by the DRT-II Bombay has appointed applicant bank as Receiver of the said property.

3. The DRT has further passed an order that the Court Receiver of this Court should hand over possession of the said property to the Receiver appointed by the DRT. However, the said possession is yet not handed over. In the meantime, applicant in the present chamber summons no. 1018 of 2004 has inter alia sought that the amount of Rs.11,00,278.13 be paid over to them in satisfaction of the Judgment and Order which has been obtained by them from the Industrial Court. By an ad-interim order dt.20.7.04 passed by Dharmadhikari, J, the receiver has been restrained by an order and injunction from transferring the

said amount of 11,00,278.13 to the Recovery Officer, DRT II as per order dt. 8.6.04 passed by the DRT-II in recovery proceedings no.208 of 2003 in Original Application no.2449 of 1999. This Chamber Summons is now placed before me for final hearing and by prayer clause (a) of the Chamber Summons it has been prayed that this court should direct respondent to pay over to the applicant the said amount of Rs.11,00,278.13 in satisfaction of their claim under the said Judgment and Order passed by the Industrial Court.

4. I am not inclined to grant the aforesaid relief for more than one reason. Firstly, it is not permissible for me in a collateral proceedings being suit no.2608 of 1992 which is a suit for dissolution and account to override the Judgment and Order passed by DRT Mumbai dt.8.6.04. It is because this court is not an appellate court or an authority over and above the order passed by the DRT. The relief in terms of prayer clause (a) of the chamber summons cannot be granted unless the said order passed by the DRT dt.8.6.04 is set aside in an appropriate proceedings which are available

for challenging the said order . Secondly, the aforesaid relief also cannot be granted because the said proceedings are initiated by the bank on the basis of the properties mortgaged to the bank. The Court Receiver is at present in possession of the properties in that suit because as stated above he is already discharged in the partnership suit. The plaintiff bank in the said suit is a mortgagee in respect of the said property. Thus, they are entitled to said amount which has been recovered from the said occupiers from the said mortgagee properties. The said suit has been transferred to the DRT. All the proceedings therefore stands transferred to the DRT in so far as bank suit is concerned. The proceedings thus initiated in the partnership suit for directions to the Court Receiver is thus, misconceived proceedings. Under s.34(1) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the provision of the Act has been given an overriding effect over and above the other laws. Thus, the DRT has an exclusive jurisdiction to consider the claim of workers. This court cannot interfere with the said proceedings and/or pass any orders which are

directly in conflict with the orders passed by the DRT. It is a settled law by the Judgment of the Apex Court in the case of Allahabad Bank Vs. Canara Bank and another reported in (2000) 4 SCC 406 that all the proceedings initiated by the bank in the DRT be heard and decided before the DRT which interalia also includes execution proceedings.

5. The learned counsel seeks leave to adjourn the order granted by the learned single judge be continued for 8 weeks. Application is unreasonable. Ad interim order is continued till 30.4.05.